

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

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| AMT MANAGEMENT, INC. |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | Case No. 4:11-CV-01209-NAB |
| |) | |
| CHRISTOPHER LEE WHITE et al, |) | |
| |) | |
| Defendants. |) | |

MEMORANDUM AND ORDER
ON PLAINTIFF’S MOTION FOR LEAVE TO FILE EXHIBITS,
DEFENDANTS’ MOTION FOR LEAVE TO FILE AN AMENDED REPLY AND
CROSS MOTIONS FOR LEAVE TO FILE ADDITIONAL MEMORANDA

Presently before the Court is Plaintiff’s Motion for Leave to File Exhibits to an affidavit which was attached to Plaintiff’s response in opposition to Defendants’ motion to dismiss. [Doc. 33]. Defendants filed a response in opposition to the Motion for Leave to File Exhibits, or in the alternative a Motion to File an Amended Reply to Plaintiff’s response in opposition to the motion to dismiss. [Doc. 35]. The parties have also filed Cross-Motions for Leave to File Additional Memoranda. [Doc. 34]; [Doc. 36]. Having fully considered the arguments set forth by the parties, the Court grants Plaintiff’s Motion for Leave to File exhibits to the affidavit, and grants Defendants’ Motion for Leave to File an Amended Reply. The Court also grants the parties Cross-Motions for Leave to File Additional Memoranda.

Discussion

On September 21, 2011, Defendants filed a joint motion to dismiss Plaintiff’s amended complaint. On October 13, Plaintiff filed a response in opposition to the motion to dismiss. Plaintiff attached the affidavit of Menshae Avraham (“Avraham”) to its response. Avraham’s

affidavit makes reference to three separate exhibits which are identified as Exhibits A, B, and C. The exhibits are not attached to Plaintiff's response. On October 20, Defendants filed a reply to Plaintiff's response, in which it highlighted the fact that the exhibits referenced in Avraham's affidavit were not included in Plaintiff's response. On October 24, Plaintiff filed a motion seeking leave to file the missing exhibits. Plaintiff claims that the exhibits to Avraham's affidavit did not scan properly and were therefore inadvertently not attached to the response.

Local Rule 2.14 allows a party to seek relief from the Court where a technical failure prevents timely electronic filing of any document. E.D. Mo. L.R. 2.14. Plaintiff alleges, and Defendants do not contest, that a technical failure caused the exhibits to not be attached to Plaintiff's response. The Court will therefore allow Plaintiff to file the exhibits referenced in Avraham's affidavit. Because Defendants did not have the opportunity to review the exhibits before filing its reply to Plaintiff's response, the Court will also grant Defendants leave to file an Amended Reply. The Amended Reply shall be filed seven days from the date of this Order.

The parties have also filed Cross-Motions for Leave to File Additional Memoranda. Plaintiff filed a Motion for Leave to File a Sur-Reply to Defendants' reply. Defendants filed a response to that motion seeking leave to file a sur-response in the event the Court grants Plaintiff's request for leave to file a sur-reply. The Court will grant both of these requests. Plaintiff's sur-reply shall be filed by November 22, 2011. Defendants' sur-response is due by November 29, 2011.

Conclusion

Based on the above analysis, the Court finds that Plaintiff's Motion for Leave to File Exhibits to the affidavit of Avraham should be granted. Also, Defendants' Motion for

Leave to File an Amended Reply should be granted. Further, the parties Cross-Motions for Leave to File Additional Memoranda should be granted.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's Motion for Leave to File Exhibits to the affidavit of Menshae Avraham is **GRANTED**. [Doc. 33]

IT IS FURTHER ORDERED that Defendants' Motion for Leave to File an Amended Reply is **GRANTED** and that Defendants' Amended Reply is due by November 15, 2011. [Doc. 35].

IT IS FURTHER ORDERED that the Plaintiff's Motion for Leave to File a Sur-Reply is **GRANTED** and the Plaintiff's Sur-Reply is due by November 22, 2011. [Doc. 34].

IT IS FURTHER ORDERED that the Defendants' Motion for Leave to File a Sur-Response is **GRANTED** and that Defendants' Sur-Response is due by November 29, 2011. [Doc. 36].

Dated this 8th day of November, 2011.

/s/ Nannette A. Baker
NANNETTE A. BAKER
UNITED STATES MAGISTRATE JUDGE